

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

TIMOTHY KAYLOR and RUSTY
KAYLOR,

Plaintiffs,

vs.

WAYNE L. McCALLUM, et al.,

Defendants.

CIVIL ACTION
NO. 2:10-CV-00075-WCO

FILED IN CLERK'S OFFICE
U.S.D.C. -Gainesville

JUL 2 2010

JAMES N. HATTEN, Clerk
By: *Don Stanhope*
Deputy Clerk

ORDER

The captioned case is before the court for consideration of plaintiffs' "Dismissal Without Prejudice" [12-1].

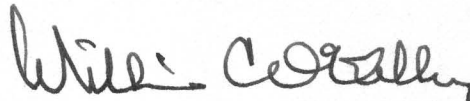
The clerk submitted the matter to the court as a stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), which provides that the plaintiff may dismiss an action without court order by filing "a stipulation of dismissal signed by all parties who have appeared." As multiple defendants have filed motions to dismiss in this action and the dismissal is signed only by plaintiffs, a stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii) would not be proper.

However, plaintiffs' counsel filed the document simply as a "Dismissal Without Prejudice," which the court construes as a notice of dismissal pursuant

to Rule 41(a)(1)(A)(i). That rule provides that the plaintiff may dismiss an action without court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Though multiple defendants have filed motions to dismiss in this case, none has filed an answer or a motion for summary judgment. Accordingly, the court finds that plaintiffs' notice of dismissal is proper.

Based upon the foregoing, the case is hereby **DISMISSED without prejudice** pursuant to plaintiffs' "Dismissal Without Prejudice" [12-1].

IT IS SO ORDERED, this 2nd day of July, 2010.



WILLIAM C. O'KELLEY
Senior United States District Judge